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## Judiciary Committee

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### HB 1275

**Title:** An act relating to records in a criminal case.

**Brief Description:** Concerning records in a criminal case.

**Sponsors:** Representatives Roach, Ericks, Hurst, Strow, Santos, Newhouse, Simpson, Haler, O'Brien, Pearson and McCune.

Brief Summary of Bill
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| <ul style="list-style-type: none"><li>• Requires out-of-state recipients of Washington criminal warrants and subpoenas to produce records in criminal investigations and prosecutions.</li><li>• Allows admissibility of records that have been verified by an out-of-state custodian.</li><li>• Provides civil immunity for compliance with a records' warrant or subpoena.</li></ul> |
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**Hearing Date:** 1/30/07

**Staff:** Bill Perry (786-7123).

**Background:**

When a crime is committed in this state, witnesses or evidence related to that crime may be outside the state. Criminal investigators or prosecutors may have to employ one or more of several methods in attempting to get testimony or other evidence into the state. Warrants, summons, subpoenas, or other legal process may be issued directing an out-of-state witness to appear in the state or an out-of-state entity to send or bring evidence to the state. In some instances, such legal process may be issued by a Washington court directly. In other instances, a legal process may be issued by a court in the foreign state at the request of a Washington court.

Washington has adopted the Uniform Act to Secure the Attendance of Witnesses from Without a State in Criminal Proceedings. This law applies reciprocally in states with similar provisions. It allows a Washington court, upon petition by either the prosecution or defense, to recommend to a foreign court that a witness be compelled to appear in a Washington grand jury proceeding or a

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criminal trial. While a witness is in the state under this procedure, he or she is granted immunity from prosecution or civil or criminal process for matters that arose before his or her appearance.

Without foreign court involvement, enforcement of out-of-state orders is problematic. However, obtaining foreign court involvement may be time consuming, expensive, and difficult.

In some kinds of criminal cases, it is particularly common for relevant records to be held in a foreign state. Many entities doing business in this state may have headquarters and record keeping facilities in another state. In some instances, the foreign custodian of those records may be reluctant to comply with a Washington court's legal process for the production of such records. If the custodian is required to accompany the records in order to authenticate them, the time and expense involved may be a deterrent to cooperation.

A relevant business record is admissible in a criminal case if:

- the custodian of the record testifies to its identity and mode of preparation;
- it was made in the regular course of business at or near the time of the event in question; and
- the court determines that the record's sources and its method and time of preparation justify its admission.

### **Summary of Bill:**

Procedures are established for the production of records in criminal investigations and prosecutions.

The act covers search warrants, subpoenas, and any other criminal process issued by a superior court in any criminal investigation or trial. The procedures apply to records held inside or outside the state by any kind of business, profession, occupation, institution, corporation, association, or natural person.

A law enforcement officer, prosecutor, or defense attorney may apply to a superior court for criminal process ordering the production of records. When served in person, or by mail or fax with a reasonable proof of delivery, the recipient of the criminal process must produce the records within 20 business days. The applicant may be granted a request for a shorter period to respond based on the possibility of adverse results, including danger to life or safety, flight from prosecution, loss of evidence, witness intimidation, jeopardy to an investigation, or undue delay. The recipient may be granted a request for a longer period to respond based on good cause and a showing of no adverse result. A recipient's motion to quash the process must be made in the issuing court and within the time that is required for the recipient's response to the process.

The applicant for a criminal process may request, or the issuing court may order, that the recipient verify the authenticity of the records. A verified record may not be excluded from evidence as hearsay or for lack of foundation if the verification attests to the identity and mode of preparation of the record. The verification must attest:

- that the record was made at or near the time of the event in question, or, if later, was made by a person with knowledge of the matter in question;
- that the record was made in the regular course of business; and
- that any duplicate produced is accurate.

A party offering a verified record must give opposing parties sufficient notice to allow a challenge. A party may challenge the admissibility of a verified record, but only if the offering

party is given sufficient notice to allow an opportunity to produce the record custodian. A challenge to admissibility may be made only on the grounds that:

- there was a failure to comply with the requirements of this act;
- the records, as submitted, cannot be understood without further explanation, and no witness is available to offer such an explanation; or
- the records are prejudicial, confusing, or a waste of time.

The act requires a Washington resident to comply with a foreign criminal process served in this state if it is the equivalent of a Washington criminal process.

Foreign state recipients of Washington criminal process and Washington recipients of foreign state criminal process are granted civil immunity for complying with the process or for any failure to notify a person affected by a disclosure made by the recipient.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill is passed.